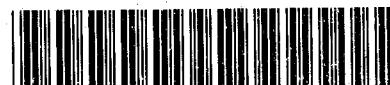


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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION  
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DOCKETED BY

COMMISSIONERS

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

IN THE MATTER OF THE APPLICATION OF  
NEUPATH NETWORKS, LLC, FOR APPROVAL  
OF A CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE TRANSPORT AND  
BACKHAUL TELECOMMUNICATIONS  
SERVICES.

DOCKET NO. T-20567A-07-0662

PROCEDURAL ORDER

**BY THE COMMISSION:**

On November 26, 2007, NewPath Networks, LLC ("NewPath" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide transport and backhaul telecommunications services to wireless carriers in Arizona.

On August 7, 2008, the Commission's Utilities Division ("Staff") filed a Letter of Insufficiency and First Set of Data Requests in this matter.

On August 15, 2008, NewPath filed responses to Staff's Data Requests.

On October 31, 2008, Staff filed a Staff Report recommending approval of NewPath's application, subject to certain conditions.

On November 7, 2008, a Procedural Order was issued setting the hearing in this matter for March 25, 2009, and other procedural deadlines were established.

On November 10, 2008, NewPath, through Arizona counsel, filed a Motion and Consent of Local Counsel for *Pro Hac Vice* of Jamie T. Hall, requesting that Mr. Hall be admitted *pro hac vice* in this matter.

On November 13, 2008, a Procedural Order was issued granting Mr. Jamie T. Hall admission *pro hac vice*.

On November 19, 2008, NewPath filed a Request for an Expedited Hearing Date ("Request").

1 On December 4, 2008, Staff filed a Response to NewPath's Request, stating Staff did not  
2 object to an expedited hearing.

3 On December 8, 2008, by Procedural Order, NewPath's Request was granted, and the date of  
4 the hearing was reset to February 18, 2009.

5 On January 30, 2009, NewPath docketed an Affidavit of Publication showing notice of the  
6 application and hearing date had been published on January 15, 2009, in the *Arizona Republic*, a  
7 newspaper of general circulation in the proposed service area.

8 On February 18, 2009, a hearing was held as scheduled before a duly authorized  
9 Administrative Law Judge of the Commission. NewPath and Staff appeared through counsel and  
10 presented testimony. During the hearing, several members of the public appeared to give public  
11 comments and raised concerns that the hearing date had been expedited, and stated they desired to  
12 file for intervention in this matter.

13 On February 27, 2009, public comments were filed on behalf of the DC Ranch Association.

14 On March 3, 2009, a Procedural Order was issued directing that the record would remain open  
15 until March 9, 2009, for additional public comments. The Procedural Order also stated that NewPath  
16 could file responses to the public comments on or before March 13, 2009.

17 Between March 3 and 13, 2009, additional public comments were docketed regarding  
18 NewPath's application. On March 13, 2009, NewPath filed a response addressing some of the issues  
19 raised in the public comments.

20 On March 18, 2009, by Procedural Order, a second day of hearing in this matter was  
21 scheduled for April 27, 2009, and other procedural deadlines were established.

22 On April 10, 2009, the Town of Carefree ("Carefree"), the Town of Paradise Valley  
23 ("Paradise Valley"), and the City of Scottsdale ("Scottsdale") filed Motions to Intervene in this  
24 matter.

25 On April 17, 2009, by Procedural Order, Carefree, Paradise Valley, and Scottsdale were  
26 granted intervention.

27 On April 20, 2009, NewPath filed objections to the requests for intervention by Scottsdale,  
28

1 Carefree, and Paradise Valley ("the intervenors").<sup>1</sup>

2 On April 24, 2009, Scottsdale docketed a Hearing Memorandum.

3 On April 27, 2009, the hearing reconvened. NewPath, Staff, and the intervenors appeared  
4 through counsel. Public comment was taken. Counsel for Staff requested that the hearing be  
5 continued to afford Staff and Newpath an opportunity to respond to Scottsdale's Hearing  
6 Memorandum, which had been received by the other parties on the morning of the hearing. Staff's  
7 request to continue the hearing was granted, and the matter was recessed.

8 On May 1, 2009, NextG Networks of California, Inc. d/b/a NextG Networks West ("NextG")  
9 filed an Application to Intervene in this proceeding.

10 On May 4, 2009, by Procedural Order, NewPath, Staff, Carefree, and Paradise Valley were  
11 directed to file written briefs addressing the jurisdictional issues raised by Scottsdale and any other  
12 relevant arguments pertaining to this matter no later than May 29, 2009.

13 On May 22, 2009, at the request of Scottsdale, a telephonic procedural conference was  
14 conducted. Carefree, Paradise Valley, Scottsdale, NewPath, and Staff appeared through counsel for  
15 the conference. Scottsdale requested that the briefing schedule be continued because Scottsdale  
16 anticipated possibly settling the issues with NewPath. The other parties agreed to continue the  
17 briefing schedule.

18 On May 29, 2009, a Procedural Order was issued amending the briefing schedule and  
19 directing the parties to file a response to NextG's Application to Intervene on or before June 12,  
20 2009. The Procedural Order also rescheduled the hearing to reconvene on July 7, 2009.

21 On June 10, 2009, Scottsdale filed a Motion to Withdraw as Party and Notice of Withdrawal  
22 of Hearing Memorandum ("Motion"). Scottsdale's Motion stated that the Scottsdale City Council had  
23 considered and adopted two separate agreements with NewPath. According to the Motion, Scottsdale  
24 no longer wishes to have a role in this proceeding due to the agreements reached with NewPath.

25 On the same date, Scottsdale filed Objections to Data Requests from Staff, stating that in light  
26 of the withdrawal of its Hearing Memorandum, Staff's Data Requests were inappropriate.

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27  
28 <sup>1</sup> Pursuant to the Procedural Order issued on March 18, 2009, objections to Motions for Intervention were to be filed no  
later than April 20, 2009. NewPath filed timely objections to the Motions for Intervention on April 20, 2009.

1 On June 12, 2009, Staff filed a Motion to Delay Briefing Schedule Until After the June 18,  
2 2009, Procedural Conference.

3 On the same date, Carefree and Paradise Valley filed briefs raising the same issues raised in  
4 Scottsdale's Hearing Memorandum, as well as other issues.

5 On June 18, 2009, a procedural conference was held to discuss Scottsdale's possible  
6 withdrawal from this proceeding and to resolve Staff's pending Data Requests. Staff, Paradise  
7 Valley, Carefree, and Scottsdale appeared through counsel for the procedural conference. Counsel  
8 for NewPath appeared telephonically. During the procedural conference, Scottsdale's request to  
9 withdraw from this proceeding was discussed and taken under advisement. Further, Staff's pending  
10 Data Requests to Paradise Valley were discussed, and Paradise Valley was ordered to respond to the  
11 Data Requests.

12 On June 30, 2009, by Procedural Order, the July 7, 2009, hearing was vacated; Scottsdale was  
13 granted withdrawal from this proceeding; a briefing schedule was established; and the parties were  
14 directed to file a response to NextG's Application to Intervene.

15 On July 10, 2009, Staff, NewPath, and Carefree filed responses to NextG's Application to  
16 Intervene. Both Staff and NewPath objected to NextG's request to intervene, stating that NextG's  
17 request did not meet the standard for granting intervention as contained in A.A.C. R14-3-105(A).  
18 Carefree did not object to NextG's intervention, and Paradise Valley failed to file a response.

19 On July 16, 2009, NextG filed a Withdrawal of Application to Intervene. NextG stated that it  
20 had deemed intervention unnecessary based on Staff's position that NextG's CC&N had been  
21 properly approved when granted, and that revocation of NextG's CC&N could not be properly  
22 addressed in this proceeding.

23 On August 21, 2009, NewPath filed a Request for Extension of Deadlines ("Extension"). The  
24 Extension states that NewPath has been "progressing toward an agreement" with Paradise Valley and  
25 Carefree. Further, NewPath avows that all of the parties in this matter participated in a conference  
26 call on August 14, 2009, and agreed that the briefing schedule should be extended.

27 Good cause has been shown for granting NewPath's request to extend the briefing schedule.  
28 Further, NextG should be allowed to withdraw its Application to Intervention in this proceeding.

1 IT IS THEREFORE ORDERED that NewPath and Staff shall **each file a brief**, no later than  
2 **September 15, 2009**, addressing the issues raised in the briefs filed by Carefree and Paradise Valley,  
3 as well as any other relevant arguments pertaining to this matter.

4 IT IS FURTHER ORDERED that **a responsive brief** may be filed by any party **no later than**  
5 **September 29, 2009**.

6 IT IS FURTHER ORDERED that all other procedural guidelines set forth in the June 30,  
7 2009 Procedural Order shall be adhered to unless specifically addressed in this Order.

8 IT IS FURTHER ORDERED that NextG Networks of California, Inc. d/b/a NextG Networks  
9 West's Withdrawal of Application to Intervention is hereby granted.

10 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
11 Communications) continues to apply to this proceeding.

12 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
13 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission *pro*  
14 *hac vice*.

15 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
16 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
17 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation  
18 to appear at all hearings and procedural conferences, as well as all Open Meetings for which the  
19 matter is scheduled for discussion, unless counsel has previously been granted permission to  
20 withdraw by the Administrative Law Judge or the Commission.

21 IT IS FURTHER ORDERED that that the time clock in the matter remains suspended.

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25 ...

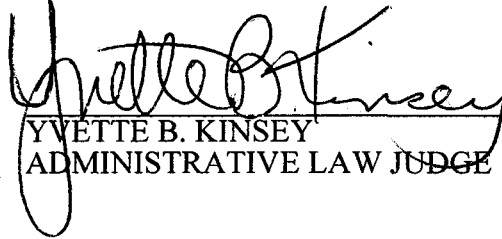
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28

1 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
2 Communications) continues to apply to this proceeding.

3 Dated this 24<sup>th</sup> day of August, 2009.

4  
5  
6   
7 YVETTE B. KINSEY  
8 ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing mailed/delivered  
10 this 24<sup>th</sup> day of August, 2009 to:

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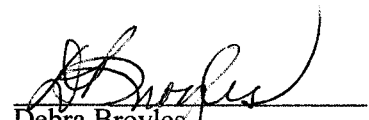
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Secretary to Yvette B. Kinsey